

From: [Aubrey "Nick" Pittman](#)

Sent: Friday, January 03, 2014 2:42 PM

To: [David Stone](#) ; [Kurt C. Kern](#) ; [Daryl Washington](#)

Cc: [Jude T. Hickland](#) ; [Brian E. Mason](#) ; [Kim Weiner](#) ; jcarlson@howrybreen.com ; [Pat Fitzgerald](#) ; rhowry@howrybreen.com ; todd.parks@wbclawfirm.com ; [Don Dawson](#) ; kathleen@dawson-clark.com ; ikeneffick@macdonalddevin.com ; JHenderson@macdonalddevin.com ; sself@feesmith.com ; [Aubrey "Nick" Pittman](#)

Subject: Re: Vehicle Inspections

David, in short, yes Daryl and I are available to confer. Should we call you or will you be calling my office?

However, I wish first to respond to a few of the points raised in your email. One, as explained in our motion for a new deadline, Plaintiffs did not request relief earlier because (a) our potential experts were unavailable over the Christmas holidays to review Defendants' expert reports to tell us what they needed; and (b) Plaintiffs' counsel were consumed with work on other filings in this case. Two, the reason for Plaintiffs' request for another inspection of the exemplar 4Runner and Volvo tractor is two-fold: (a) Defendants' experts make certain observations of those vehicles that now necessitate reexamination of the vehicles; and (b) two or three of Plaintiffs' potential experts have not yet inspected those vehicles.

Three, although you are correct that Toyota offered to allow Plaintiffs to inspect the vehicles on today, as you may recall, at the time of your offer the parties had already arranged to conduct the deposition of Jeff Vick on January 3. Accordingly, Plaintiffs' counsel and Mr. Vick would not have been available to inspect the vehicles on January 3. In addition, even if Plaintiffs other potential experts had inspected the crash and/or exemplar vehicles today, they still would not have been able to have a report prepared tomorrow.

Four, the reasons we requested the January 20 date are several. One, many of our potential experts are unavailable over the next week. One of them is on a cruise ship in Australia until January 13. Another is out of the country until next Friday. Another is in trial next week, and Dr. Burton, who was recently in a motor vehicle accident, is in recovery for at least a week. Therefore, they will all need additional time to review Defendants' expert reports before we can determine if they will have rebuttal testimony to provide.

Plaintiffs are prepared to work within the parameters of the Court's new expert disclosure deadlines to ensure that this extension does not interfere with those dates.

From: [David Stone](#)

Sent: Friday, January 03, 2014 1:39 PM

To: pittman@thepittmanlawfirm.com ; [Kurt C. Kern](#) ; [Daryl Washington](#)

Cc: [Jude T. Hickland](mailto:Jude.T.Hickland@howrybreen.com) ; [Brian E. Mason](mailto:Brian.E.Mason@howrybreen.com) ; [Kim Weiner](mailto:Kim.Weiner@howrybreen.com) ; jcarlson@howrybreen.com ; [Pat Fitzgerald](#) ; rhowry@howrybreen.com ; todd.parks@wbclawfirm.com ; [Don Dawson](#) ; kathleen@dawson-clark.com ; jkeneffick@macdonalddevin.com ; JHenderson@macdonalddevin.com ; sself@feesmith.com

Subject: RE: Vehicle Inspections

Nick, even though we provided full disclosure of our expert reports and supporting materials, including thorough documentation of the crash test with our expert disclosures on December 20, you did not make any request to inspect the crash tested 4Runner and Volvo until December 31, to which we responded on the same day. Further, I was puzzled by your urgent and untimely request to inspect the exemplar 4Runner and subject Volvo tractor since you have known for nearly two years that those vehicles were at Carr Engineering in Houston and available for inspection there.

Nevertheless, your experts certainly could have inspected either the crash tested 4Runner and Volvo in Phoenix, or the vehicles in Houston, today, as we had offered. You chose not respond to our offer. However, with reasonable notice, we can make these vehicles available for inspection next week, with the exception of Tuesday and Thursday. If you still want to inspect those vehicles, please let me know immediately when, by whom and how long you want to inspect these vehicles.

As for your request to extend the rebuttal report deadline, we do not believe an extension to January 20 will work with the other deadlines set by Judge Ramirez after yesterday's hearing. While I cannot speak for the other defendants, we might consider a request for a shorter extension of that deadline, in exchange for some other discovery accommodations from plaintiffs. If you want to have a meaningful conference on that issue, please feel free to call Kurt or me.

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From: Aubrey Nick Pittman [mailto:pittman@thepittmanlawfirm.com]
Sent: Thursday, January 02, 2014 7:07 PM
To: David Stone; Kurt C. Kern; Daryl Washington; Aubrey Nick Pittman
Cc: Jude T. Hickland; Brian E. Mason; Kim Weiner
Subject: Re: Vehicle Inspections

David:

Does this mean Toyota is unwilling to agree to an extension of the expert rebuttal date?

Also, as you know our experts would not be able to be in both places tomorrow so I'm not sure how that was supposed to work.

From: David Stone <David.Stone@bowmanandbrooke.com>
Date: Thu, 2 Jan 2014 21:27:44 +0000
To: Kurt C. Kern<Kurt.Kern@bowmanandbrooke.com>; Aubrey \"Nick\" Pittman
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Subject: RE: Vehicle Inspections

Nick, we have still not heard from you about whether you want to inspect the Volvo and 4Runner used in the crash test in Phoenix and/or the subject Volvo tractor and exemplar 4Runner in Houston tomorrow, January 3. If you want to inspect at either or both of these location tomorrow, I need to know by 4 pm today. Otherwise, I will have to release that date.

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From: Kurt C. Kern
Sent: Tuesday, December 31, 2013 6:23 PM
To: Aubrey "Nick" Pittman (pittman@thepittmanlawfirm.com); dwashington@dwashlawfirm.com
Cc: David Stone; Jude T. Hickland; Brian E. Mason; Kim Weiner
Subject: Vehicle Inspections

Nick:

I'm not sure if it got communicated to you, but further to my e-mail of very early this morning, we've confirmed that the crash test vehicles in Phoenix and the exemplar vehicles in Houston are available for inspection on Friday, January 3rd. Please let me know if you and/or your experts want to inspect the various vehicles that day and I will supply you with the logistics regarding such inspections. Happy New Year.

Kurt

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